



Attorney Docket No. 109870-130115

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Patent
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of:

Pugh et al.

Application No.: 09/912,571

Filed: July 24, 2001

Confirmation No.: 5944

For: MULTI-VERSION HOSTING OF
APPLICATION SERVICES

Examiner: Nguyen-Ba, Hoang-Vu Antony

Group Art Unit: 2192

Customer No.: 25,943

CERTIFICATE OF TRANSMISSION/MAILING

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Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

To The Commissioner for Patents:

INTRODUCTORY COMMENTS

This paper is submitted in response to the Notification of Non-Complaint Appeal Brief mailed December 16, 2005. The period for response extends to January 16, 2006.

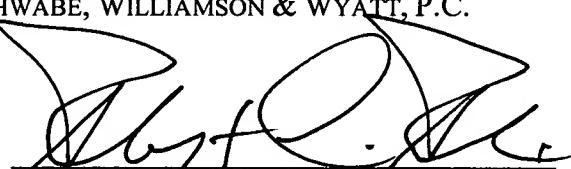
Remarks begin on page 2 of this paper.

REMARKS

In response to the Examiner's Notice of Non-Compliant Appeal Brief, the appeal brief has been amended to reflect the correct application number in the header of pages 2-10. Copies of the compliant appeal brief are enclosed with this paper.

If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1513. If any fees are due in connection with this paper, the Commissioner is authorized to charge Deposit Account 500393.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: January 3, 2006
by: 
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Docket No.: 109870-130115

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By:

Yvette L. Chriscaden
Yvette L. Chriscaden

Date: January 3, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Application. No. : 09/912,571 Confirmation No.: 5944
Inventor : William A. Pugh, et al.
Filed : July 24, 2001
Title : METHOD AND APPARATUS FOR MULTI-VERSION
UPDATES OF APPLICATION SERVICES
Art Unit : 2192
Examiner : Nguyen Ba, Hoang Vu A.
Customer No. : 25,943

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' BRIEF IN SUPPORT OF APPELLANTS' APPEAL
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Dear Sir:

This appeal furthers the Notice of Appeal filed on July 19, 2005. The appeal arises from a final decision by the Examiner in the Office Action, dated April 19, 2005. The final decision was in response to arguments filed on November 3, 2004, in response to an earlier office action, mailed August 4, 2004.

Appellants submit this *Brief on Appeal* in triplicate, including payment in the amount of \$500.00 to cover the fee for filing the *Brief on Appeal*. Appellants

respectfully request consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application.

Real Party in Interest:

This application is assigned to BEA Systems, Inc., having a principal place of business at 2315 North First Street, San Jose, California 95131. The assignment is pending recordation at the United States Patent and Trademark Office.

Related Appeals and Interferences:

To the best of Appellants' knowledge, there are no related appeals or interference proceedings currently pending, which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Status of Claims:

Appellants appeal the rejection of claims 1-24. Claims 1-24 were pending and were rejected in the Final Office Action dated April 19, 2005. Claims 1-24 are pending, and are reproduced, as pending, in Appendix A.

Summary of the Claimed Subject Matter:

As stated in item 1 on page 1 of the specification of the instant application, the invention relates to the field of hosting application services; more specifically, the present invention relates to the issue of concurrently hosting application services with multiple versions of the hosting services. Successor versions of an application service provision runtime library **114** of an application service provision apparatus **108** are provided with corresponding update services **116** to facilitate upgrade of applications **104** to selected ones of the successor versions on request, as depicted in **FIG. 1**. **See page 6, line 25, through page 7, line 14.** In various embodiments, a dispatcher **110** of the application service provision apparatus **108** is provided with complementary functions to coordinate the servicing of the upgrade requests. **See page 7, lines 24-26.** In one embodiment, an application **104** submits an upgrade request to the update service **116** of the application's current version of the runtime library **114** used, as depicted in **FIG. 2**. In response, the update service **116** notifies

the dispatcher 110 of the request. **See page 9, line 14 through page 11, line 6.** The dispatcher 110 then notifies the update service 116 of the first successor version of the runtime library 114, which in response upgrades the application 104 to use the successor version of the runtime library 114. **See page 9, line 14 through page 11, line 6.** The dispatcher 110 successively repeats the process until the desired version of the runtime library 110 is reached. **See page 9, line 14 through page 11, line 6.** Each of the update services 116 is equipped to upgrade the application 104 from an immediate predecessor version of the runtime library 114. In an alternate embodiment, in response, the dispatcher 110 notifies the update service 116 of the target version of the runtime library 114 directly, which, in response, upgrades the application 104 to use the target version of the runtime library 114. **See page 16, line 18 through page 18, line 26.** Each of the update services 116 is equipped to upgrade the application from any predecessor version of the runtime library 114. **See page 16, line 18 through page 18, line 26.**

Grounds For Rejection To Be Argued On Appeal:

- I. Claims 1, 8, 14, 19, and 22 stand rejected under 35 U.S.C. § 112, second paragraph.
- II. Claims 1-24 stand rejected under 35 U.S.C. §102(b) over the teachings of U.S. Patent No. 6,009,274 to *Fletcher, et al.* (hereinafter "FLETCHER").

Grouping of Claims

For purposes of this appeal, based on the above listed grounds of rejection and their current pending states, all claims 1-24 stand or fall together.

Arguments

- I. Rejection of claims 1, 8, 14, 19 and 22 under 35 U.S.C. § 112, second paragraph was improper because said claims particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

The final Office Action states that claims 1, 8, 14, 19, and 22 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. While Applicants agree that claims must particularly point out and distinctly define the metes and bounds of the subject matter desired to be protected by the patent grant, applicants respectfully note that this standard is met in the claims as presently constituted. In contrast to the Applicants' position, the final Office Action alleges that claims 1, 8, 14, 19, and 22 are "not clear, precise and unambiguous as to:

- 1) How the first update service is related to the second updated service, or
- 2) Whether the first update service is a distinct module/device from the second and the first service, or
- 3) Whether the first update service is to only receive a request for update and the second update service is to only update the runtime library software module."

Applicants respectfully disagree and assert that the claims are clear and precise. Claims 1, 8, 14, 19, and 22, as shown below, explicitly demonstrate that the first update service and the second update service are part of "the" runtime library. This expressly indicates that although the services may be different versions, both are of the same runtime library.

Claim 1 recites:

1. A method of operation in an application service provision apparatus having an application service provision runtime library with multiple versions, the method including:

receiving, by a first update service of a first version of the application service provision runtime library, a request to update an application to a second later version of the runtime library; and
a second update service of the second later version of the runtime library upgrading the application to the second later version of the runtime library.

Claim 8 recites:

8. An apparatus including:

storage medium having stored therein programming instructions designed to implement a dispatcher on the apparatus to

receive notification, from a first update service of a first version of an application service provision runtime library, of an application requesting update to a second later version of the application service provision runtime library, and
notify a second update service, of said second later version of the application service provision runtime library, of said request; and
at least one processor coupled to the storage medium to execute the programming instructions.

Claim 14 recites

14. An apparatus including:

storage medium having stored therein programming instructions designed to implement a first version of an application service provision runtime library, including a first update service equipped with the ability to

receive a request from an application to update the application to a second later version of the application service provision runtime library, and
notify a selected one of

a second update service of the second later version of the application service provision runtime library of said request, and a dispatcher of the apparatus of said request; and at least one processor coupled to the storage medium to execute the programming instructions.

Claim 19 recites:

19. An apparatus including:
storage medium having stored therein programming instructions designed to implement a first version of an application service provision runtime library, including a first update service to receive a notification, from a selected one of a second update service of a predecessor version of said first version of the runtime library to update an application to said first version of the runtime library, and a dispatcher of the apparatus to update said application to said first version of the runtime library,
update, in response to the notification, said application to said first version of the runtime library, and notify the selected one of said second update service and said dispatcher of completion of said update of said application to said first version of the runtime library; and at least one processor coupled to the storage medium to execute the programming instructions.

Claim 22 recites:

22. An apparatus including:
storage medium having stored therein programming instructions designed to implement a first version of an application service provision runtime library, including a first update service to receive a notification from a second update service of a first predecessor version of said first version of the runtime library to update an application to said first version of the runtime library,
update, in response to the notification, said application to said first version of the runtime library, and
notify a third update service of a successor version of said first version of the runtime library to update said application to said successor version of the runtime library; and
at least one processor coupled to the storage medium to execute the programming instructions.

Applicants respectfully reiterate that they are entitled to claim **all described embodiments**, which would include, but not be limited to, using either separate modules or unified modules and/or multiple devices or a single device.

Moreover, this versatility is expressly described in the substitute specification on page 13 second paragraph indicating:

while for ease of understanding, dispatcher function 110 and monitor function 118 are described as separate functions, **they may be implemented as one or more components.**

It is accordingly believed that the specification and the claims meet the requirements of 35 U.S.C. § 112, second paragraph.

II. Rejection of claims 1-24 under 35 U.S.C. §102(b) was improper because FLETCHER failed to teach each and every limitation.

It is well settled that anticipation under 35 U.S.C. §102 requires the disclosure in a signal piece of prior art to teach each and every limitation of a claimed invention. *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052, 32 USPQ2d 1017, 1019 (Fed. Cir. 1994). . MPEP 2131 states, "TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM" and "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Furthermore, anticipation requires that each claim element must be **identical** to a corresponding element in the applied reference. *Glaverbel Société Anonyme v. Northlake Mktg & Supply, Inc.*, 45 F.3d 1550, 1554 (Fed. Cir. 1995). Thus, to anticipate the present invention, FLETCHER must disclose every element recited in the pending claims.

The FLETCHER reference discloses automatically updating software components on end systems over a network to the newest version. More specifically, in column 5, lines 53-61 FLETCHER indicates:

According to one aspect of the invention, a method is provided for automatically updating software in a network including a server and an agent, comprising the steps of generating **a server request**, wherein said server request identifies the newest version level of a software component; generating **an agent update request** if the agent needs said **newest version level** of said software component; and updating the agent **with said newest version level** of said software component in response to said update request.

Thus, FLETCHER teaches that "**the server request**" is transmitted from the server and identifies the **newest version level**, while "**an agent update request**" is only generated by the agent to request update to the "**newest version level**" of the software component. Upon completion of the update process as described in FLETCHER the software component is at the **newest version, regardless of the number of intervening versions**. This can be problematic, especially if the desired upgrade should occur in stages not by leaping to the "**newest version level**" as required in FLETCHER.

In contrast, the instant application as claimed in claim 1 requires that “a first update service” receives “a request to update an application to a **second later version.**” Moreover, the instant application as claimed in claim 1 indicates that “a second update service” upgrades the application to a “**second later version** of the runtime library” as indicated again in claim 1 of the instant application. Thus, in the instant application as claimed in claim 1, the first update service receives the request “to update an application to a **second later version**” instead of generating “the server request” as indicated in FLETCHER. The later version of the instant application as claimed in claim 1 is advantageously not necessarily the “newest” version as recited in FLETCHER. In this manner the instant application as claimed in claim 1 possibly enables a multi-step upgrade.

Moreover, FLETCHER does not teach in the identified passage which entity updates the software, agent or server. Further inquiry reveals that the requested file for the update is sent out “in round-robin fashion” (Co. 11, line 66), by the server to the agents. However, the file must be replaced by the agent on the server. In this manner, even assuming *arguendo* that the server of FLETCHER is equivalent to the first update service and the agent of FLETCHER is equivalent to the second update service, the agent and server of FLETCHER do not operate in the same manner as claimed in the instant application. Namely, the server of FLETCHER generates the server request instead of receiving “a request to update” as the first update service of the instant application and the agent of FLETCHER generates the agent update request instead of upgrading to a “later version” as recited in claim 1 of the instant application. Even switching the server and agent of FLETCHER does not result in the identical invention as claimed in claim 1 of the instant application. MPEP 2131 requires “The **identical** invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)(emphasis added).

Further, FLETCHER does not show “**receiving**, by a first update service of a first version of said application service provision runtime library, a request to update an application to a second later version of the runtime library” as recited in claim 1 of the instant application. Nor does FLETCHER teach or suggest “a second update service of said second later version of the runtime library **upgrading** said application

to said ***second later version*** of the runtime library" as recited in claim 1 of the instant application.

Claims 8, 14, 19, and 22 contain similar language and limitations to those of claim 1. Therefore, for at least the same reasons, these claims are also not anticipated, and thus, patentable over FLETCHER.

Claims 2-7, 9-13, 15-18, 20-21, and 23-24 depend on claims 1, 8, 14, 19, and 22, incorporating their limitations, respectively, therefore, for at least the same reasons, claims 2-7, 9-13, 15-18, 20-21, and 23-24 are patentable over FLETCHER under 102(b).

Conclusion

Appellants respectfully submit that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

This brief is re-submitted in triplicate, along with Check Number _____ for \$500.00 to cover the filing of appeal brief. We do not believe any additional fees, in particular extension of time fees, are needed. However, should that be necessary, please charge our deposit account 500393. In addition, please charge any shortages and credit any overages to Deposit Account No. 500393.

Respectfully submitted,



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Agent for Appellant Applicants

Date: January 3, 2006

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Appendix A – Appealed Claims

1. (Previously Presented) In an application service provision apparatus having an application service provision runtime library with multiple versions, a method of operation comprising:

receiving, by a first update service of a first version of said application service provision runtime library, a request to update an application to a second later version of the runtime library; and
a second update service of said second later version of the runtime library upgrading said application to said second later version of the runtime library.

2. (Original) The method of claim 1, wherein said second later version of the runtime library is a selected one of the most current version of the runtime library and a predecessor version of the most current version of the runtime library.

3. (Previously Presented) The method of claim 1, wherein said second later version of the runtime library is a selected one of an immediate successor version of said first version of the runtime library and a successor version of greater than one generation removed from said first version of the runtime library.

4. (Previously Presented) The method of claim 1, wherein the method further comprises:

said first update service of said first version of said application service provision runtime library notifying a dispatcher of said application service provision apparatus of said update request; and
said dispatcher notifying said second update service of said second version of said application service provision runtime library of said request.

5. (Previously Presented) The method of claim 4, wherein said second later version of the runtime library is a successor version of greater than one generation removed from said first version of the runtime library, and said method further comprises:

said dispatcher notifying a third update service of an immediate successor version of said first version of the runtime library of said request;
said third update service of said immediate successor version upgrading said application to said immediate successor version of the first version of the runtime library; and
said third update service of said immediate successor version notifying said dispatcher of completion upon upgrading said application to said immediate successor version of the first version of the runtime library.

6. (Previously Presented) The method of claim 4, wherein said second later version of the runtime library is greater than one generation removed from said first version of the runtime library, and said method further comprises:

said dispatcher notifying a third update service of an immediate predecessor version of said second version of the runtime library of said request;
said third update service of said immediate predecessor version upgrading said application to said immediate predecessor version of the second version of the runtime library; and
said third update service of said immediate predecessor version notifying said dispatcher of completion upon upgrading said application to said immediate predecessor version of the second version of the runtime library.

7. (Previously Presented) The method of claim 4, wherein said second later version of the runtime library is a successor version of greater than one generation

removed from said first version of the runtime library, said dispatcher notifying said second update service of said second version of said application service provision runtime library of said request directly, and said second update service upgrading said application to said second version of the runtime library.

8. (Previously Presented) An apparatus comprising:
storage medium having stored therein programming instructions designed to
implement a dispatcher on the apparatus to
receive notification, from a first update service of a first version of an
application service provision runtime library, of an application
requesting update to a second later version of the application service
provision runtime library, and
notify a second update service, of said second later version of the
application service provision runtime library, of said request; and
at least one processor coupled to the storage medium to execute the
programming instructions.
9. (Original) The apparatus of claim 8, wherein said second later version of the runtime library is a selected one of the most current version of the runtime library and a predecessor version of the most current version of the runtime library.
10. (Previously Presented) The apparatus of claim 8, wherein said later version of the runtime library is a selected one of an immediate successor version of said first version of the runtime library, and a successor version of greater than one generation removed from said first version of the runtime library.
11. (Previously Presented) The apparatus of claim 8, wherein said second later version of the runtime library is a successor version of greater than one generation

removed from said first version of the runtime library, and dispatcher is further equipped to notify a third update service of an immediate successor version of said first version of the runtime library to update said application to said immediate successor version of the first version of the runtime library, and to receive notification from said dispatcher of completion upon upgrading said application to said immediate successor version of the first version of the runtime library.

12. (Previously Presented) The apparatus of claim 8, wherein said second later version of the runtime library is greater than one generation removed from said first version of the runtime library, and the dispatcher is further equipped to notify a third update service of an immediate predecessor version of said second version of the runtime library to update said application to said immediate predecessor version of the second version of the runtime library, and to notify said dispatcher of completion upon upgrading said application to said immediate predecessor version of the second version of the runtime library.

13. (Previously Presented) The apparatus of claim 8, wherein said second later version of the runtime library is a successor version of greater than one generation removed from said first version of the runtime library, said dispatcher notifying said second update service of said second version of said application service provision runtime library of said request directly, and said second update service upgrading said application to said second version of the runtime library.

14. (Previously Presented) An apparatus comprising:
storage medium having stored therein programming instructions designed to implement a first version of an application service provision runtime library, including a first update service equipped with the ability to

receive a request from an application to update the application to a second later version of the application service provision runtime library, and notify a selected one of

a second update service of the second later version of the application service provision runtime library of said request, and

a dispatcher of the apparatus of said request; and

at least one processor coupled to the storage medium to execute the programming instructions.

15. (Original) The apparatus of claim 14, wherein said second later version of the runtime library is a selected one of the most current version of the runtime library, and a predecessor version of the most current version of the runtime library.

16. (Previously Presented) The apparatus of claim 14, wherein said second later version of the runtime library is a selected one of an immediate successor version of said first version of the runtime library, and a successor version of greater than one generation removed from said first version of the runtime library.

17. (Previously Presented) The apparatus of claim 14, wherein said first update service is further equipped to

receive a notification from a selected one of

a third update service of a predecessor version of said first version of the runtime library and

a dispatcher of the apparatus,

update, in response to the notification, said application to said first version of the runtime library, and

notify the selected one of

said third update service and

said dispatcher of completion of said update of said application to said first version of the runtime library.

18. (Previously Presented) The apparatus of claim 14, wherein said first update service is further equipped
 - to receive a notification from a third update service of a first predecessor version of said first version of the runtime library to update said application to said first version of the runtime library,
 - to update, in response to the notification, said application to said first version of the runtime library, and
 - to notify a fourth update service of a successor version of said first version of the runtime library to update said application to said successor version of the runtime library.
19. (Previously Presented) An apparatus comprising:
 - storage medium having stored therein programming instructions designed to implement a first version of an application service provision runtime library, including a first update service to receive a notification, from a selected one of
 - a second update service of a predecessor version of said first version of the runtime library to update an application to said first version of the runtime library, and
 - a dispatcher of the apparatus to update said application to said first version of the runtime library,
 - update, in response to the notification, said application to said first version of the runtime library, and
 - notify the selected one of
 - said second update service and

said dispatcher of completion of said update of said application
to said first version of the runtime library; and
at least one processor coupled to the storage medium to execute the
programming instructions.

20. (Original) The apparatus of claim 19, wherein said first version of the runtime library is a selected one of the most current version of the runtime library, and a predecessor version of the most current version of the runtime library.
21. (Previously Presented) The apparatus of claim 19, wherein said first version of the runtime library is a selected one of an immediate successor version of said predecessor version of the runtime library, and a successor version of greater than one generation removed from said predecessor version of the runtime library.
22. (Previously Presented) An apparatus comprising:
storage medium having stored therein programming instructions designed to
implement a first version of an application service provision runtime
library, including a first update service to
receive a notification from a second update service of a first
predecessor version of said first version of the runtime library
to update an application to said first version of the runtime
library,
update, in response to the notification, said application to said first
version of the runtime library, and
notify a third update service of a successor version of said first
version of the runtime library to update said application to said
successor version of the runtime library; and

at least one processor coupled to the storage medium to execute the programming instructions.

23. (Previously Presented) The apparatus of claim 22, wherein said first version of the runtime library is a second predecessor version more than one generation earlier than the most current version of the runtime library.

24. (Previously Presented) The apparatus of claim 22, wherein said first version of the runtime library is an immediate successor version of said first predecessor version of the runtime library.

Appendix B – Copies of Evidence Submitted

No evidence has been submitted under 37 C.F.R. 1.130, 1.131, or 1.132. No evidence entered by Examiner has been relied upon by Appellants in the appeal.